DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

(Syllabi prepared by M. P. Burks, State Reporter.)

RUSSELL v. LOUISVILLE & NASHVILLE RAILROAD COMPANY.—Decided at Wytheville, July 2, 1896.—*Cardwell*, J. Absent, *Harrison*, J:

1. RAILROADS—*Cattle-guards—Sec. 1262 of Code.* In an action against a railroad company to recover the penalty imposed by sec. 1262 of the Code for failure to construct cattle-guards, the gist of the action is whether or not the points within the plaintiff's enclosed lands at which he requested the defendant to construct the cattle-guards were necessary and proper places for them to be constructed within the meaning of the statute, and not whether that section applies to private crossings.

2. PLEADING—*Demurrer—Withdrawal of pleas in order to pass on demurrer.* After a demurrer has been overruled and the defendant has pleaded, if the court is satisfied that the demurrer should have been sustained, it should allow the defendant to withdraw his plea, set aside its former order on the demurrer, and enter an order sustaining the demurrer.

3. PLEADING—*Action for penalties—Debt.* Actions to recover specific penalties imposed by statute do not sound in damages, and where a statute imposes a penalty no part of which can accrue to the Commonwealth, but provides no particular mode by which the person aggrieved may recover the penalty, the common law action of debt is the proper form of action. An action on the case does not lie.

PERSINGER'S ADM'R v. CHAPMAN.—Decided at Wytheville, July 9, 1896.—*Cardwell*, J. Absent, *Harrison*, J:

1. EQUITABLE RELIEF—*Reformation—Mutual mistake.* Equity will not relieve against an alleged mutual mistake of fact when it is clear that there can be no true statement of the case established, and that any effort to reform the instrument alleged to have been executed in mutual mistake would in all probability, if not certainly, result in injustice to the estate of one of the parties.

2. EQUITABLE RELIEF—*Mutual mistake—Diligence.* Equity will not extend its aid to one who has been guilty of culpable negligence. It requires that the party who asks relief on the ground of mutual mistake shall have exercised at least the degree of diligence which may be fairly expected of a reasonable person under the circumstances.

SLOCUM v. COMPTON—Decided at Wytheville, July 9, 1896.—*Buchanan*, J. Absent, *Harrison*, J:

1. EJECTMENT—*Verdict for part of land—Requisites of verdict.*—Where the verdict, in an action of ejectment, is for a part only of the land sued for, the boundaries of the part recovered should be designated. The verdict must be certain in itself, or must refer to some certain standard by which to ascertain the land so found, otherwise it will be too uncertain to warrant a judgment upon it.